



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9979-12-Region 10]

Approval of the Application by the State of Idaho to Administer the National Pollutant Discharge Elimination System (NPDES) and Electronic Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On June 5, 2018, the Administrator for the Environmental Protection Agency approved the application by the State of Idaho to administer and enforce the Idaho Pollutant Discharge Elimination System (IPDES) program pursuant to the Clean Water Act. Concurrent with this approval, EPA is also approving IPDES program for electronic reporting. The Idaho Department of Environmental Quality (IDEQ) will administer the approved IPDES program regulating discharges of pollutants into waters of the United States under its jurisdiction as described in the state's program application. EPA has approved the State's implementation plan that transfers the administration of specific program components from EPA to the State over a four-year period in accordance with the Memorandum of Agreement between IDEQ and EPA R10 (MOA) and subject to EPA oversight and enforcement. EPA will suspend issuance of NPDES permits in Idaho in accordance with the State's approved schedule to transfer NPDES program authority. EPA will retain the authority to issue NPDES permits for facilities located on tribal lands and/or discharging to tribal waters.

DATES: On June 5, 2018, the Administrator approved Idaho's IPDES program including electronic reporting.

FOR FURTHER INFORMATION CONTACT: Visit EPA's webpage at

<https://www.epa.gov/npdes-permits/idaho-npdes-program-authorization> or contact Karen Burgess, NPDES Permits Unit, EPA Region 10; (206) 553-1644; burgess.karen@epa.gov. The State's application, supporting documentation and EPA's response to comments received during the public comment period and hearings may be viewed or downloaded from EPA's webpage. The IDEQ contact is Mary Anne Nelson, IPDES Program Manager; mary.anne.nelson@deq.idaho.gov; (208) 373-0291. IDEQ's application, related documents and program development documents may be viewed or downloaded from the IDEQ website <http://www.deq.idaho.gov/water-quality/ipdes/program-application/>.

SUPPLEMENTARY INFORMATION:

General Information

A. Does this action apply to me?

Entities potentially affected by this action are: the EPA; tribal programs; and the regulated community and citizens within the state of Idaho. This table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities that this action is likely to regulate.

Table 1—Entities Potentially Affected by This Proposed Approval

Category	Examples of potentially affected entities
State and Indian Tribal Governments	States and Indian Tribes that provide certification under section 401 of the CWA; States and Indian Tribes that own or operate treatment works.
Municipalities	POTWs required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.
Industry	Facilities required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.
NPDES Stakeholders	Any party that may review and provide comments on NPDES permits.

Citizens of the state of Idaho	Any party that may review and provide comments on NPDES permits.
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If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is EPA taking?

EPA approved the State of Idaho's IPDES program granting IDEQ the authority to administer the NPDES program in Idaho to regulate discharges of pollutants into waters of the United States under its jurisdiction. Concurrent with this approval, EPA is also approving IPDES program for electronic reporting under the NPDES and pretreatment programs.

C. What is EPA's authority for taking this action?

The CWA created the NPDES program under which EPA may issue permits authorizing the point source discharge of pollutants to waters of the United States under conditions required by the Act. The CWA provides that EPA shall approve a State to administer its own permit program, upon the Governor's request, provided that EPA has determined that the State has adequate authority and a program sufficient to meet the Act's requirements. 33 U.S.C. 1342(b). The regulatory requirements for state program approval are set forth in 40 CFR part 123 (<https://www.ecfr.gov/>); subpart B provides the requirements of state program submissions, which IDEQ refers to as the IPDES program application. EPA may approve a partial and phased program under CWA section 402 (n)(4). 33 U.S.C. 1342(n)(4).

Pursuant to CWA section 402(d), 33 U.S.C. 1342(d), EPA can object to draft IPDES permits proposed by IDEQ and, if the objections are not resolved, the authority to issue such permits transfers to EPA. EPA retains enforcement authorities under CWA sections 308, 309, 402(i) and 504 and may take enforcement actions if EPA determines that the State has not taken timely and/or appropriate enforcement actions for IPDES program violations as authorized under those provisions.

Public notice of the application: On August 11, 2017, EPA initiated the public comment period for the IPDES program application in the Federal Register (82 FR 37583) pursuant to 40 CFR 123.61. The public process included informational meetings and public hearings in the following five Idaho cities on the dates set forth:

September 11, 2017 at Central Public Library in Idaho Falls.

September 12, 2017 at Twin Falls Public Library.

September 13, 2017 at Boise Public Library.

September 14, 2017 at Lewiston Community Center.

September 15, 2017 at Coeur d'Alene Public Library.

These meetings included an overview of both the federal and state programs and provided an opportunity for question and answer. Each informational meeting was immediately followed by a public hearing in accordance with 40 CFR 124.12 and provided interested parties with the opportunity to give written and/or oral testimony into the official record. All comments received by EPA were considered and responded to by EPA with the final IPDES program approval. Information about the IPDES Program Application is available in the *Federal Register* document for the application and the response to comments is available from EPA's webpage

<https://www.epa.gov/npdes-permits/idaho-npdes-program-authorization>.

IPDES program summary: As required under section 402(b) of the CWA, 33 U.S.C. 1342(b), and 40 CFR 123.22, the IPDES program description specifies how IDEQ will administer the NPDES program. IDEQ will issue IPDES permits under their jurisdiction; conduct compliance and enforcement activities; gather and maintain NPDES records and report to EPA; and oversee the regulated activities of all IPDES-permitted facilities. EPA will retain the authority to issue NPDES permits for facilities located on tribal lands and/or discharging to tribal waters. The scope of IDEQ permitting authority includes individual and general permits for discharges to waters of the United States from facilities or activities, including industrial (e.g., commercial, mining, oil and gas, and silviculture discharges; animal feeding operations; and aquatic animal production facilities) and municipal wastewater treatment facilities (e.g., publicly and privately owned treatment works); discharges to waters of the United States from federal facilities; storm water discharges, including municipal separate storm sewer systems, construction and industrial storm water general permits, and individual permits for storm water discharges; sewage sludge (biosolids) program under 40 CFR part 503; and the pretreatment program under 40 CFR part 403. IDEQ will not have authority to regulate discharges incidental to the normal operation of a non-military, non-recreational vessel operating in a capacity as a means of transportation. Instead, EPA has the authority under CWA section 402, 33 U.S.C. 1342, to regulate those discharges from non-military, non-recreational vessels and all ballast water discharges.

IDEQ will assume permitting and compliance authority for the NPDES program in four phases. EPA will retain full permitting and compliance authority for the relevant major component(s)

until that authority is transferred to IDEQ in accordance with the following schedule of anticipated transfer dates:

Phase I – Individual Municipal Permits and Pretreatment on July 1, 2018.

Phase II – Individual Industrial Permits on July 1, 2019.

Phase III – General Permits (Aquaculture, Pesticide, CAFO, Suction Dredge, Remediation) on July 1, 2020.

Phase IV – Federal Facilities, General and Individual Stormwater Permits and Biosolids on July 1, 2021.

Public process and tribal consultation: EPA opened a 60-day public comment period that ended on October 10, 2017. In addition, EPA held public hearings during the week of September 11, 2017, to accept comments on the IPDES program application. The *Response to Comments and Testimony* compiles all comments and testimony submitted to EPA during the public comment period and provides EPA's response to those comments available at EPA's website.

A total of 18 comment letters and testimonials were received during the comment period. Of those 18, 10 commenters expressed support for the transfer of NPDES authority to IDEQ. One commenter expressed a general concern about IDEQ's ability to adequately run a program that sufficiently protects the environment. The remaining 7 commenters provided specific comments about the IPDES program application or IPDES program. EPA provided responses to all comments. No comments resulted in changes to the IPDES program application as provided with

the *Federal Register* document for the IPDES program application.

EPA engaged with all five federally-recognized Idaho tribes (Shoshone-Bannock Tribe, Shoshone-Paiute Tribe, Nez Perce Tribe Council, Coeur d'Alene Tribe and the Kootenai Tribe) and two federally-recognized Eastern Washington tribes (Kalispell Tribe and Spokane Tribes). EPA participated in several meetings with the Tribes that were held before and after the public comment period. The primary outcome of the tribal meetings was the development of IDEQ's *IPDES Tribal Participation Process*. This document establishes the process by which IDEQ will provide early notification of and participation in permit issuance activities with interested tribes, available at IDEQ's website <http://www.deq.idaho.gov/media/60181337/ipdes-tribal-participation-process.pdf>.

CROMERR: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the *Federal Register* (70 FR 59848) and codified under 40 CFR part 3. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Per the requirements of 40 CFR 3.2(b)(2), "A state, tribe, or local government that is applying for initial delegation, authorization, or approval to administer a federal program or a program in lieu of the federal program, and that will allow document submission requirements under the program to be satisfied with an electronic document, must use the procedures for obtaining delegation, authorization, or approval under the relevant part of Title 40 and may not use the procedures set forth in 40 CFR 3.1000; but the

application must contain the information required by 40 CFR 3.1000(b)(1) and the state, tribe, or local government must meet the requirements of 40 CFR 3.2000.”

IDEQ will implement the National Network Discharge Monitoring Report System (National NetDMR) and Shared CROMERR Services (SCS) electronic document receiving system in accordance with the application submitted by IDEQ to EPA on March 26, 2018. The application anticipated concurrent approval with the State’s 40 CFR part 123 (NPDES State Program Requirements) and part 403 (General Pretreatment Regulations for Existing and New Source of Pollution) programs to allow electronic reporting under 40 CFR parts 122, 125, and 403-471. EPA has reviewed IDEQ’s application and determined both that the application contains the information required 40 CFR 3.1000(b)(1) and that IDEQ’s National NetDMR and SCS systems comply with the requirements for electronic document receiving systems in 40 CFR 3.2000. This approval is effective upon the date of this publication in the *Federal Register*.

Decision process: The State of Idaho submitted the IPDES program application to EPA on August 31, 2016. EPA reviewed the application pursuant to 40 CFR part 123, subpart B and the application was deemed complete by EPA on September 30, 2016. In accordance with 40 CFR 123.21(d), IDEQ requested and EPA agreed to extend the statutory review period for the application until June 30, 2018. Pursuant to 40 CFR 123.61, on August 11, 2017, EPA initiated the 60-day public comment period as noticed in the *Federal Register* (82 FR 37583). After the close of the public comment period, completion of the required tribal consultation and responding to comments, the EPA Administrator approved the IPDES program based on the

requirements of section 402 of the CWA, 33 U.S.C. 1342, and 40 CFR part 123. IDEQ and the Regional Administrator signed the MOA prior to final IPDES program approval on June 5, 2018. Upon approval, the Administrator notified the State of Idaho.

Authority: This action is taken under the authority of section 402 of the Clean Water Act as amended, 33 U.S.C. 1342. I hereby provide public notice of EPA's final action authorizing the State of Idaho through IDEQ to administer the approval IPDES program regulating discharges of pollutants to waters of the U.S. under its jurisdiction.

Dated: June 5, 2018.

E. Scott Pruitt,
Administrator.

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